IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 741 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE H.R.SHELAT
and
Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed : to see the judgements?

2. To be referred to the Reporter or not? :

3. Whether Their Lordships wish to see the fair copy : of the judgement?

4. Whether this case involves a substantial question : of law as to the interpretation ofthe Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? :

HEIRS OF JAYANTILAL KANJIBHAI
Versus
RAMESHCHANDRA UTTAMRAM

MR SH SANJANWALA for Petitioners
MS KJ BRAHMBHATT for Respondent

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE H.R.SHELAT
and
MR.JUSTICE M.C.PATEL

Date of decision: 11/08/2000

C.A.V.JUDGMENT : (Per : Panchal,J.)

This revision application has been referred to the Larger Bench for disposal in the following circumstances :

The petitioners are the owners of property bearing Nondh No.258 situated in Ward No.9, Ambaji Road, Surat. The opponent was inducted as tenant of west side portion of the property at the rent of Rs.40/- per month. According to the petitioners, opponent had paid rent upto July 31, 1975 and as he was in arrears of rent from August 1, 1975, a notice dated November 25, 1975 calling upon him to pay arrears of rent was served. The case of the petitioners was that as the opponent-defendant was not ready and willing to pay rent, they were entitled to get possession of the suit premises on the ground of non-payment of rent. Moreover, according to the petitioners, the defendant had purchased a Bungalow in Ravindra Park Co.op. Housing Society situated at Adajan Road, Surat in the name of his wife and as he had acquired suitable alternative accommodation, he was liable to be evicted under section 13(1)(l) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 ("the Act" for short). Under the circumstances, the petitioners instituted Small Cause Suit No.264/76 in the court of learned Additional Judge, Small Cause Court at Surat against the opponent and prayed for decree of eviction against the opponent together with other consequential reliefs.

2. The opponent contested the suit by filing written statement at Exh.10. It was mentioned in the written statement that he had paid entire arrears of rent in reply to notice dated November 25, 1975 and as he was ready and willing to pay rent as contemplated by Section 12(1) of the Act, the petitioners were not entitled to get decree of eviction on the ground of arrears of rent. A dispute regarding standard rent was also raised and it was contended by the opponent that the standard rent of the suit premises should be fixed at Rs. 31/- per month. What was averred in the written statement was that Bungalow situated in Ravindra Park Co.op.Housing Society was purchased by his wife with her own funds and as his wife was not his Benamidar, the petitioners were not entitled to decree of eviction under section 13(1)(l) of the Act.

3. In view of the pleadings of the parties, necessary issues for determination were raised by the Trial Court at Exh.11. Oral as well as documentary evidence was led by the petitioners and the opponent in support of their respective cases. On consideration of the evidence, the Trial Court held that the opponent had tendered all the arrears of rent as claimed in the demand notice by Money Order and as the case was governed by the provisions of section 12(1) of the Act, the opponent was not liable to be evicted on the ground of arrears of rent. After taking into consideration the rent of similarly situated adjoining premises, the Trial Court fixed standard rent of the suit premises at Rs.31/- per month plus education cess at 50%. So far as alternative accommodation is concerned, the Trial Court held that the wife of the opponent had her own source of income from which she had purchased Bunglow No.9 in Ravindra park Co.op.Housing Society and she was not Benamidar of the opponent. It was found that the wife of the opponent after purchasing the bungalow, had let out the same on rent to another tenant and the opponent had no right, title or interest in that Bungalow. In view of these conclusions, the Trial Court held that the petitioners were not entitled to decree of eviction under section 13(1)(l) of the Act. In the ultimate result, the Trial Courst dismissed the suit by judgment and decree dated April 3, 1981.

4. Feeling aggrieved by the decree of the Trial Court, the petitioners preferred Regular Civil Appeal No. 184/81 before the District Court, Surat and the learned Assistant Judge, Surat, who heard the appeal, dismissed the same by judgment and decree dated January 28, 1983, giving rise to the present revision.

5. At the time of final hearing of revision application, it was urged by the learned counsel for the petitioners before the learned Single Judge that in view of the judgment of this Court in HASMUKHLAL RAICHAND SHAH v. ARVINDBHAI MOHANLAL KAPADIA, 1988(1) GLH 122, acquisition of alternative accommodation by the wife of the tenant should be construed as acquisition by the tenant and decree of eviction under section 13(1)(l) of the Act ought to have been passed against the opponent. One of the grounds on which decree of eviction under section 13(1)(l) of the Act was denied by the Trial Court, was that the wife of the opponent had let out the Bungalow purchased by her to the tenant and thus, alternative accommodation was not available to the tenant. While holding so, the Trial Court had placed reliance on the Division Bench decision of the High Court

in SHIVLAL NATHURAM VAISHNAV v. HARSHADRAI HARIBHAI OZA & ORS. 21 GLR 99. Therefore, it was also submitted that the law laid down by the Division Bench of this Court in Shivlal Nathuram Vaishnav (supra) to the effect that cause of action must exist at the time of notice and also at the time of filing of the suit, requires reconsideration in view of the judgment of the Supreme Courst in DEWAN CHAND BHALLA v. DR ASHOK KUMAR BHOIL, (1994)5 SCC 445 and RAMANLAL BECHARBHAI TAILOR v. CHAMPAKLAL NANALAL MODI, 1998(2) GLH (UJ)9. In view of the above-referred to submissions advanced on behalf of the petitioners, the learned Single Judge was of the opinion that the points raised deserve consideration by the Larger Bench. That is how, the learned Single Judge has referred the entire matter to the Larger Bench for disposal.

6. Mr. S.H. Sanjanwala, learned Counsel for the petitioners urged that acquisition of alternative accommodation by the wife of the opponent should be construed as acquisition by the tenant and, therefore, the Courts below ought to have passed decree of eviction against the opponent under section 13(1)(l) of the Act. It was claimed that the evidence on record does not indicate that relations between the opponent and his wife are strained in any manner and as the opponent has domain over the house acquired by his wife, decree of eviction should be passed against the opponent. It was pleaded that decree of eviction which may be passed under section 13(1)(l) of the Act cannot be resisted on the ground of tenant having lost acquired accommodation either before or after filing of the suit for eviction and, therefore, the revision by the landlords should be accepted. In support of his submissions, learned counsel placed reliance on the decisions rendered in the cases of; (1) Hasmukhlal Raichand Shah (supra), (2) Dewan Chand Bhalla (supra), (3) Ramanbhai Becharbhai Tailor (supra), and (4) Prem Chand v. Sher Singh, 1981 DRJ 287 (SC).

7. Ms. Kalpana Brahmbhatt, learned counsel for the tenant contended that the evidence on record indicates that the wife of the opponent is the exclusive owner of the bungalow acquired by her and as the tenant has no right, title or interest in the said bungalow, decree of eviction on the ground of opponent having acquired alternative suitable accommodation after coming into operation of the Act should not be passed. In the alternative, it was maintained that the landlords must be quick in taking the action after accrual of the cause of action under section 13(1)(l) of the Act and as the petitioners by their inaction had allowed the premises to

go out of hands of wife of the opponent, it is the petitioners who are to be blamed and decree of eviction should be denied to them. According to the learned counsel for the tenant, the principle enunciated by the Division Bench of this Court in Shivlal N. Vaishnav (supra) does not require reconsideration, as the same is in consonance with the scheme of the Act and, therefore, the revision should be dismissed. In support of her submissions, learned counsel placed reliance on the decisions rendered in (1) Ganpat Ram Sharma and others v. Smt. Gayatri Devi, AIR 1987 SC 2016, (2) B.R.Mehta v. Smt.Atma Devi and ors. AIR 1987 SC 2220, and (3) Anandi D. Jadhav (dead) by L.Rs. v. Nirmala Ramchandra Kore and others, AIR 2000 SC 1386.

8. We have heard the learned counsel for the parties and taken into consideration the evidence on record. Though before the Trial Court it was pleaded by the landlords that the wife of the opponent had acquired bungalow as benamidar of the opponent, the said claim was negatived by the Trial Court. The sale deed produced at Exh.55 establishes that the wife of the opponent had purchased Bungalow no.9 in Ravindra Park Co.op.Housing Society from one Taraben and that she is the owner of the said bungalow. Exh.57 is the receipt which indicates that loan instalment was paid by the wife of the opponent. The evidence on record shows that the wife of the defendant had paid consideration of the bungalow to Taraben by cheque drawn by her on the Bank wherein her account is maintained. Moreover, she had also paid transfer fees to the society by cheque. Pass-book produced at Exhs.70 & 71 establishes that the wife of the defendant had regular income and was depositing her savings in Bank A/c. The assessment orders issued by the Income-tax Officer and produced at Exhs.58 & 59 show that the wife of the defendant used to pay income-tax right from the year 1971. Exh.56 shows that after purchasing bunglow, wife of the opponent had let out the same on rent to one tenant and got fixed even standard rent of the said bungalow as is indicated by Exhs.18 & 19. The finding recorded by the Trial Court that Bungalow No.9 in Ravindra Park Co.op.Housing Society Limited is the property acquired by wife of the tenant from her own funds and she is not benamidar of the opponent, is based on reliable and cogent evidence led by the tenant. That finding, on reappreciation of facts, is also upheld by the District Court, which is final court of facts. The concurrent findings of facts are not seriously challenged before us by the learned counsel for the petitioners in this revision and, therefore, the finding that the wife of the tenant and not the tenant himself has acquired

accommodation and that the opponent-tenant has no legal right, title or interest in the said property is hereby upheld. In the light of finding that Bunglow no.9 in Ravindra park Co.op.Housing Society Ltd. is purchased by wife of the opponent and not by the opponent himself, the question has to be considered whether the opponent, after coming into operation of the Act, can be said to have acquired vacant possession of a suitable residence. At this stage, it will be useful to quote Section 13(1)(l) of the Act, which is as under :-

"13(1): Notwithstanding anything contained in this Act, but subject to the provisions of Sections 15 and 15-A, a landlord shall be entitled to recover possession of any premises if the Court is satisfied -

(1) that the tenant after the coming into operation of this Act has built, acquired vacant possession of or been allotted a suitable residence."

A plain reading of the above quoted provision makes it manifest that under clause (l), landlord is entitled to recover possession of the premises from the tenant provided Court is satisfied that after coming into operation of the Act,the tenant has built or has acquired vacant possession of or been allotted a suitable residence. From the scheme of the provision, it is clear that it is only when the tenant gets a right to reside in a house other than the demised premises on the happpening of any one of the three alternatives mentioned in Section 13(1)(l) that the landlord can seek recovery of possession of the demised premises. We will first proceed to consider the point whether decision of the Supreme Court in Prem Chand (supra) is of any assistance in answering the question posed for our consideration in this reference. That was a case under the Delhi Rent Control Act, 1958 and section 14(1)(h) of the Act came-up for consideration of the Court. The respondent-tenant was out of possession since October 9, 1976. He was dispossessed during the pendency of the appeal before the Rent Control Tribunal. His son was a business executive who was at one time, allotted a flat by his employers. On December 12, 1980, the respondent's wife purchased a flat at Saket from the Delhi Development Authority at the cost of Rs.1,20,000/- and the flat was available to the respondent. The explanation offered by the respondent was that it had been let out by his wife to their son. Having considered the averments of the parties on the point at issue, it was held in that case that the

respondent had through his wife acquired vacant possession of a residence in Delhi and in that view of the matter was not entitled to retain old tenanted premises. In our respectful opinion, the said decision rests on facts of that case and does not lay down general proposition of law that acquisition of premises by the wife in all circumstances would amount to acquisition of premises by the tenant.

9. In Hasmukhlal Raichand Shah (supra), the wife of the tenant had built and acquired possession of another premises. Not only on the date of the suit, the premises acquired were vacant, but the tenant had given an undertaking to the appellate court that if the suit was decreed in favour of the landlord, then he would not claim any equity on the ground that the alternative accommodation was not vacant. The evidence established that earlier the premises acquired by wife were let out to another person and the tenant on behalf of his wife was collecting rent. Moreover the tenant himself had handed over the key of the bungalow acquired by the wife to the Court Commissioner appointed by the Trial Court. Relying on these and other admitted facts, the learned Single Judge of this Court held that the tenant had domain over the property acquired by his wife and provisions of section 13(1)(l) of the Act were attracted to the facts of the case. The learned Single Judge thereafter proceeded to consider the question whether principle laid down in Prem Chand (supra) was applicable to the facts of the case proved before him. It was urged on behalf of the tenant that decision in Prem Chand (supra) was over-ruled by the Supreme Court in B.R.Mehta's case (supra) and should not be relied upon. The learned Single Judge after considering the two judgments of the Supreme Court, has rightly held that the decision in Prem Chand's case (supra) is not over-ruled by the Supreme Court in B.R.Mehta's case (supra). The learned Single Judge after holding that the principle laid down in Prem Chand's case (supra) was applicable to the facts proved before him, had passed decree of eviction against the tenant under section 13(1)(l) of the Act. In our view, having regard to different fact situation before us, the principle laid down in H.R.Shah's case (supra), is of no help to the tenant.

10. In B.R.Mehta (supra), the Supreme Court had occasion to construe the meaning of the expression 'tenant has, before or after commencement of the Act, built, acquired vacant possession of, or been allotted a residence' in terms of clause (h) of section 14(1) of the Delhi Control Act, 1958. The appellant in that case was

tenant of the ground floor of premises No. 2/14, Kalkaji Extension, New Delhi since 1968 and was paying rent of Rs. 340/- per month. He was inducted as tenant by deceased husband of respondent no.1. On July 20, 1977 an eviction petition was filed by the landlord against the appellant on the ground of bonafide requirement. On September 25, 1978, wife of the appellant was allotted a flat i.e. a government quarter due to her employment as a teacher in the Government Girls Higher Secondary School. On March 17, 1986, respondent no.1 filed a petition in the Court of Rent Controller, Delhi against the appellant on the ground that the wife of the appellant had been allotted a residential quarter and, therefore, decree of eviction under section 14(1)(h) of the Rent Act should be passed. The claim was resisted by the appellant on the ground that his relations with his wife were strained and as he had no legal right in the property acquired by his wife, he was not liable to be evicted from the premises. The Additional Rent Controller passed an order of eviction against the appellant, which was confirmed in appeal by the Rent Control Tribunal. Feeling aggrieved by that, the appellant approached High Court in Second Appeal, which was summarily rejected. Thereupon the appellant approached the Supreme Court. While allowing the appeal of the tenant, what is emphasised by the Supreme Court is that there is no law according to which husband and wife could be deemed to be one person and, therefore, the correct position is that if a wife or a husband acquires a property and the other spouse if he/she is the tenant, has a legal right by virtue of such acquisition and stay there, then only can such acquisition or allotment of premises would disentitle the tenant to continue possessioin of tenanted premises or attract the provisions of clause (h) of section 14(1) of the Act. It would be relevant to reproduce the pertaining observations made by the Supreme Court in Paras 4 & 6 of the reported judgment, which are as under :-

"4. The short question is whether under clause (h) of section 14(1) of the Act, allotment of a house to a wife, who is a government employee, in all circumstances, disentitle the tenant to retain the tenanted premises. We are unable to accept the view of Delhi High Court. We have noted the provisions. The purpose of the Act is to control rents and eviction, in other words, to control unreasonable eviction and to ensure that in an atmosphere of acute shortage of accommodation, there is proper enjoyment of available spaces by those who want and deserve.

In other words, to ensure that there is no unreasonable and unnecessary spaces in the hands of one tenant and other tenants and landlords' need of occupation of spaces remains unsatisfied. Clause (h) of section 14(1) is an attempt in a way to ration out accommodation between tenants and landlords. Looked at from that point of view, unless acquisition of a premises or a flat or allotment of a premises or part of a premises by the tenant, in which he had domain which he can reasonably and alternatively use as a substitute for the place he is using in the tenancy it cannot lead to a forfeiture of his right to occupy his tenanted premises. The case would be otherwise, however, if a tenant comes into possession of a premises or is allotted a piece of residence or acquires vacant possession of the premises, then such a tenant cannot prevent, if other conditions are fulfilled under section 14(1)(h) of the Act being liable to forfeiture of his tenancy. But, counsel for the respondent heavily relied on a decision of this Court in Prem Chand v. Sher Singh, 1981 DRJ 287 (SC). That was a case under the Delhi Rent Control Act, 1958 and section 14(1)(h) of the Act came-up for consideration. The respondent was out of possession since October 9, 1976. He was dispossessed during the pendency of the appeal before the Rent Control Tribunal. The respondent's son was a business executive, who was, at one time, allotted a flat by his employers. On December 12, 1980, the respondent's wife purchased a flat at Saket from the Delhi Development Authority, at a cost of about Rs., 1,20,000/-. The flat was available to the respondent though his explanation is that it had been let out by his wife to their son. The respondent thereafter has now no case to be put back in possession of the flat in dispute. Chandrachud, C.J. delivering the judgment of the Court observed that the Court had allowed the appellants to amend their applications for possession by pleading that the respondent had acquired possession of a vacant residence within the meaning of section 14(1)(h) of the Delhi Rent Control Act, 1958. Having considered the averments of the parties on the point at issue, it was held in that case that the respondent had through his wife acquired vacant possession of a residence in Delhi and in that view of the matter was held not entitled to retain old tenanted

premises. Mr. Avadh Bihari Rohtaji, learned counsel strenuously contended before us that this proposition that acquisition of a flat by the wife was acquisition by the tenant and such acquisition in all circumstances, would be within the mischief of section 14(1)(h) of the Act and would disentitle the tenant to retain his flat in question. We are unable to accept this reading of the said Act. The said decision rested on the facts of that case. There in that case, this court found that the respondent's wife had purchased a flat in Saket and further found that the flat was available to the respondent. In those circumstances, it was held that there was acquisition of vacant possession of a residence and as such section 14(1)(h) of the Act would be attracted. It cannot however be laid down as a general proposition of law that acquisition of flat by the wife in all the circumstances, would amount to acquisition of flat by the tenant. This position has been very properly highlighted in the decision of the Delhi High Court in Smt. Revati Devi v. Kishan Lal, 1970 Ren CJ 417 where Deshpande, J. as the learned Chief Justice then has held the mere occupation of a new residence by a tenant without any legal right to do so, would not be covered by the proviso (h) to S.14(1) of the Delhi Rent Control Act. If he goes to stay inthe house of his wife, legally speaking, he has no right as such to stay and can be turned out from the house at any time by its legal owner, namely, the wife. There was no law, according to which, the husband and the wife could be deemed to be one person. Therefore, where proviso (h) required that the tenant himself should acquire vacant possession of another residence before he can become liable to eviction, the effect of its language cannot be whittled down by arguing that proviso (h) would apply even if it is not the tenant himself, but his wife or his other relation were to acquire such other residence. Therefore, as a general proposition of law, the acquisition of other residence must be by the tenant himself before proviso (h) to sub-section (1) of section 14 of the Act would apply. The learned Judge dealt with this and observed that in construing the above provision, it has to be borne in mind that the scheme of the Act had to be appreciated. Tenancy is a right vested in the tenant. Main purpose of the Act is the protection of tenants

from eviction. Various proviso to sub-sections (1) of section 14 laid down the exception to this rule. The learned Judge observed that when proviso (h) made tenant liable to eviction, its effect was to divest the tenant of his right of tenancy. The intention of the legislature in divesting the tenant of his right was based upon the fact that the tenant had legally acquired another residence as of right. There is no law according to which husband and wife would be deemed to be one person. Therefore, the correct position must be that if a wife or a husband acquires a property and the other spouse if he/she is the tenant, has a legal right by virtue of such acquisition and stay there, then only can such acquisition or allotment of premises would disentitle or attract the provisions of cl.(h) of section 14(1), otherwise the whole purpose would be defeated. In other words, if for all practical and real sense the tenant, acquire, built or was allotted another residence, then his need for the old tenanted residence goes and the tenant loses his right to retain his tenanted premises. This is the rationale behind the scheme.

6. Our attention was drawn to certain observations of Bhagwati, J., as the learned Chief Justice then was, in Phiroze Abominate Desai v. Chandrakant M. Patel (1974) 3 SCR 267: (AIR 1974 SC 1059), where dealing with certain facts whether premises given on a licence could be considered in considering the bonafide requirement of the landlord to the allotment or acquisition. In our opinion, this principle is wholly irrelevant for the point in controversy before this Court. We are not concerned here whether there was ground for bonafide requirement of the landlord for which a suit had been filed and which is pending appeal. This fact of acquisition or allotment of flat in the name of wife (which incidentally she has lost having given-up her job) can be in certain circumstances a factor in judging the bonafide needs of the landlord; but the same indisputably cannot be any ground to evict the tenant on the ground that he has acquired vacant possession or been allotted residence in terms of cl.(h) of sec. 14(1). Mr. Rohtagi drew our attention to certain observations of this court in Gajanan Dattatray

v. Sherbanu Hosang Patel (1976)1 SCR 535 : (AIR 1975 SC 2156), where this court held that the tenant's liability to eviction arises when the fact of unlawful sub-letting is proved. The fact that subsequently the other tenant had left the premises does not cure the mischief done. Mr. Rohtagi placing this decision tried to urge before us that the allotment itself of a residence or acquisition of a residence by the tenant or the wife of the tenant was sufficient to attract Cl.(h) of sec. 14(1) of the Act. The fact that subsequently the tenant had left the premises was irrelevant and did not affect the position. It was further submitted that the tenant had acquired a premises or was allotted a residence which could be considered to be so in terms of clause (h) of sec. 14(1) but the flat in question allotted to the wife of the tenant could not by any stretch of imagination be considered to be a matrimonial home. In England the right of the spouses be if the husband or the wife to the matrimonial home are now governed by the provisions of Matrimonial Homes Act, 1967. Halsbury's Laws of England, Fourth Edition, Vol. 22 page 650 deals with the rights of occupation in matrimonial home and Para 1047 deals with and provides that where one spouse is entitled to occupy a dwelling house by virtue of any estate or interest or contract or by virtue of any enactment giving him or her the right to remain in occupation, and the other spouse is not so entitled, then the spouse not so entitled has the certain rights (known as "rights of occupation") that is to say in occupation, a right not to be evicted or excluded from the dwelling house or any part of it by the other spouse except with the leave of the Court given by an order, if not in occupation, a right with the leave of the court so given to enter into and occupy the dwelling house. But, such rights are not granted in India though it may be that with change of situation and complex problems arising it is high time to give the wife or the spouse a right of occupation in a truly matrimonial home, in case of marriage breaking-up or in case of strained relationship between the husband and the wife. We, however, cannot for the purpose of this case get much assistance from the principle adumbrated in para-1047 of Halsbury's Laws of England. In England cases before 1968 established that occupation of the matrimonial home by a tenant's

> wife after the tenant had left counts as occupation by the tenant so as to preseve the statutory tenancy for as long as the marriage itself subsists. In those circumstances in England the landlord could not properly be granted an order for possession against the husband unless there were available grounds for possession against both husband and wife. The tenant cannot abandon his rights while his wife remains, nor can the landlord evict the wife even if the tenant consents or purports to surrender his statutory tenancy. This is the result of case law in England and much social awareness and the case laws have been given statutory expression in the Matrimonial Homes Act, 1967. We have no such law. The premises in question which the wife occuplied was indisputably not the matrimonial home. It is nobody's case. The husband would not, therefore, has any statutory or legal right against the Government to use and enjoy the allotted premises to the wife of the tenant because of her job. Look at from any point of view, the tenant cannot be made to lose his tenancy because of wife acquiring possession of a flat or allotment of a flat because of her official duties over which husband has no right or domain or occupation."

11. This question has been again examined by the Supreme Court in the recent decision rendered in Anandi D.Jadhav (supra). In that case, the suit premises was let out to respondent no.1 on monthly rent of Rs.100/- by erstwhile owner in 1987 and the respondents no.2 & 3 lived with respondent no.1, who was their mother till they built a bungalow in R.S.No.690/B, Sambhajinagar. The owner had filed suit under section 13(1)(l) of the Act against the respondents for their eviction on the ground that the respondents had built the house and thus, had alternative suitable accommodation for their residence. The suit was contested by the respondents, inter-alia, on the ground that the respondent no.1 i.e.the mother had no concern with the house built by respondents no.2 & 3. The suit was dismissed by the Trial Court holding that respondents no.2 & 3 had constructed the house which could not be said to be suitable residence of the respondent no.1. However, the suit was decreed by the District Court holding that though respondents no.2 & 3 had built house, yet respondent no.1 could be said to have acquired alternative suitable accommodation. The validity of that

decree was challenged by respondent no.1 in writ petition before High Court. The High Court was of the opinion that the respondent no.1 could not be said to have acquired alternative suitable residence and, therefore, allowed the writ petition filed by respondent no.1. Thereupon appeal was preferred by the landlord before the Supreme Court. While dismissing the appeal of the landlords,what is held by the Supreme Court is that respondent no.1 being aged mother, undoubtedly has a right to be maintained by respondents no.2 & 3, but that does not mean that she is entitled to live along with her sons' families. The expression 'acquired vacant possession' in the context is construed by the Supreme Court to mean acquisition of vacant possession of a suitable accommodation in which one has a right to reside and right must be a legally enforceable right. The pertinent observations made by the Supreme Court in Paras-9 & 10 of the reported judgment are as under :-

"9. Now the question arises what is the ambit of the term 'tenant' in section 5(11) of the Act. In so far as it is relevant for our purpose, it reads thus :

'5(11): 'tenant' means any person by whom or on whose account rent is payable for any premises and includes-

(a) such sub-tenants and other persons as have derived title under a tenant before the 1st day of February, 1973:

(aa) to (bba) ****** ****** ******

(c)(i) in relation to any premises let for residence, when the tenant dies, whether the death has occurred or after the commencement of the Bombay Rents,Hotel and Lodging House Rates Control (Amendment) Act, 1978, any member of the tenant's family residing with the tenant at the time of his death, or in the absence of such member, any heir or the deceased tenant, as may be decided in default of agreement by the Court.

(c)(ii) ***** ***** *****

The definition of 'tenant' is too exhaustive to include any member of the family residing with him. Such members of his family who were residing with the tenant at the time of his death, or in their absence any heir of the deceased tenant, as may be decided in default of

agreement by the Court, would become tenant only on his death. It is true that the first respondent and her sons, respondents 2 and 3, were let into possession of the suit premises about 30 years before the institution of the suit, but the first respondent alone was the tenant and respondents 2 and 3 were there as members of her family. They were, therefore, not tenants of the suit premises. The concurrent findings of the Courts below are that respondents 2 and 3 built the house for which the first respondent did not contribute any money; she did not shift her residence to the said house though she was visting that house off and on. Inasmuch as the first respondent did not built any house and respondents 2 and 3 are not the tenants, the first of the three alternatives, referred to above, is not available to the appellant to seek eviction of the first respondent.

10. Now with regard to the second alternative, namely, whether the first respondent acquired vacant possession of the house built by respondents 2 and 3, the learned counsel for the appellants has submitted that she is entitled to claim maintenance from them under section 20 of the Hindu Adoptions and Maintenance Act which imposes an obligation on a son/daughter to maintain his/her infirm parents or the unmarried daughters who are unable to maintain himself/herself and, therefore, she acquired a right to live in the said house. The submission though attractive lacks substance. The first respondent being aged mother undoudbtedly has a right to be maintained by respondents 2 and 3 but that does not mean that she is entitled to live along with her sons' families. The expression 'acquired vacant possession', in the context, in our view, means acquisition of vacant possession of a suitable accommodation in which one has a right to reside. It must be a legally enforceable right. The first respondent does not have any such legal right to reside in the house of respondents 2 and 3. Though, it cannot be disputed that respondents 2 and 3 had for a period of 30 years before building their own house lived with the first respondent as her sons and morally they are obliged to take care of the aged mother by accommodating her in their house, yet in law we cannot enlage that obligation to legal duty to provide her residence in the house

along with their family. Thus, the second alternative will also have no application. Admittedly, the third alternative is not attracted to the facts of this case."

12. From the decision rendered by the Supreme Court in B.R.Mehta (supra) and Anandi D.Jadhav (supra), it is clear that if a wife or a husband acquires a property and the other spouse if he/she is the tenant, has a legal right by virtue of such acquisition and stay there, then only can such acquisition or allotment of premises would attract the provisions of section 13(1)(l) of the Act. There is no law, according to which, husband and wife could be deemed to be one person. If the tenant has no legal right in the property acquired by the other spouse, then his need for old tenanted residence does not go, nor does he lose his right in tenanted premises. In case of acquisition on behalf of the tenant, it must be established that the tenant has domain over the acquired residence. As observed by the Supreme Court in B.R.Mehta (supra)' case, in India there is no law like Matrimonial Home Act, 1967 as is in force in England. The premises in question which the wife of the opponent has acquired, is indisputably not matrimonial home. The opponent, therefore, would not have any statutory or legal right against his wife to use and enjoy the acquired premises. It is relevant to notice that the Trial Court has in terms held that "the wife of the opponent is the exclusive owner of Bungalow no.9 situated in Ravindra Park Co.op. Housing Society and the opponent has no right, title or interest in that bungalow". This finding has been upheld by the District Court, which is the final court so far as facts are concerned. In our considered opinion, therefore, it cannot be said that the opponent acquired suitable alternative accommodation after coming into force of the Act. The Trial Court as well as District Court were, therefore, justified in dismissing the suit for eviction which was filed under section 13(1)(l) of the Act.

13. As the opponent has not acquired any suitable alternative accommodation after coming into force of the Act, the question whether the opponent can resist grant of decree on the ground of his wife having let out the acquired property either before or after filing of the suit, becomes academic in nature and the said question does not strictly arise for our consideration on the facts and in the circumstances of the case. Therefore, we are of the opinion that it is not necessary to consider the question whether law laid down by the

Division Bench of this Court in Shivlal Nathuram Vaishnav (supra) that the cause of action must exist at the time of notice and also at the time of filing of the suit, is good law or not ? We may state that another ground of eviction, namely, arrears of rent, is not pressed into service on behalf of the petitioners-landlords.

For the foregoing reasons, we do not find any substance in the revision application. The revision application, therefore, fails and is dismissed. Rule is discharged, with no orders as to costs.

(J.M.Panchal, J.)

(H.R.Shelat, J.)

(M.C. Patel, J.)

(patel)